Supreme Court, U.S.
FILED

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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

RONALD HARRISON, ROBERT BALL, RENO DEVENCENZI ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED

Petitioners,

v.

STATE INDUSTRIAL INSURANCE SYSTEM a NEVADA Public Agency, DOES 1-XXV, inclusive,

Respondents.

On Petition for Writ of Certiorari to the Nevada Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the Nevada State Industrial Insurance System illegally deprived the State's permanent total pensioners and death beneficiaries of one month's benefit payment in 1993.

II. Whether the Nevada Supreme Court erred as a matter of law when they affirmed the Motion for Summary Judgment when clear issues of material fact existed.

III. Whether the permanent total pensioners were discriminated against and not afforded the equal protection of the law as disabled persons pursuant to the fourteenth amendment.

PARTIES TO THE PROCEEDING

The parties to this action in the Supreme Court of Nevada were Ronald Harrison et al. and the State Industrial Insurance System of Nevada.

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OPINIONS BELOW

The Decision of the Nevada Supreme Court was entered on September 24, 1998. The decision is not published, and is reproduced below in the appendix to this petition as Appendix A.

The Decision and Order of the First Judicial District Court of the State of Nevada in and for Carson City was filed on July 16, 1996.

JURISDICTION

The decision of the Nevada Supreme Court was entered on September 24, 1998. The Petition for Writ of Certiorari has been timely filed in accordance with Rule 13.3 of the Rule of this Court. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISION AT ISSUE

(A) FIFTH & FOURTEENTH AMENDMENT VIOLATIONS

The Fifth Amendment to United States Constitution provides in pertinent part: "[N]or shall private property be taken for public use, without just compensation."

Section 1 of the Fourteenth

> Amendment to the United States Constitution provides in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it's jurisdiction the equal protection of the laws."

Title 42, United States Code, Sec. 1983, provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State..subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

(1) ILLEGAL TAKING

The Fifth Amendment prohibits the governmental taking of private property "for public use without just compensation." The prohibition is applicable to the states through the Fourteenth Amendment. Chicago Burlington & Quincy Railroad v. Chicago, 166 U.S. 226 (1987).

(2) DUE PROCESS VIOLATION

Under the Fifth and Fourteenth Amendments, fair process is required for intentional acts of the government or its employees. Daniels v. Williams, 474 U.S. 327 (1986).

(3) EQUAL PROTECTION VIOLATION

Under the Fourteenth and Fifth Amendments, grossly unreasonable discrimination by the government violates the Equal Protection clause.

(B) VIOLATIONS OF NEVADA REVISED STATUTES 616C.450

The relevant portions of the Nevada Revised Statute 616C.450 are as follows:

NRS 616C.450 Compensation to injured employee or dependent of injured employee for permanent total disability or death benefits if injury or occupational disease occurred before July 1, 1980.

1. An injured employee or the dependents of an injured employee who are

> entitled to receive compensation for a permanent total disability pursuant to NRS 616C.440 or a death benefit pursuant to NRS 616C.505 for an industrial injury or occupational disease which occurred before July 1, 1980 are entitled to receive compensation of not less than $600 **each month...**

STATEMENT OF THE CASE

Petitioner is an injured worker who has been on permanent total disability status since 1985. He is in one of two classes of persons injured by the actions of the State Industrial Insurance Company. The other class of persons injured are death beneficiaries, or surviving spouses and dependent children of workers who lost their lives in work-related accidents. Petitioner herein seeks a certification to file a class action to incorporate all those injured, both: (1) permanent total disability pensioners; and (2) death beneficiary pensioners.

Respondent State Industrial Insurance System of Nevada (hereinafter SIIS) is responsible for paying permanent total pensioners **monthly** payments. On or about February 12, 1993 a letter was sent to all

permanent total disability pensioners and death beneficiary pensioners that the SIIS was moving into a "new era" and checks would now be paid at the end of the month rather than the first of the month.

The letter included a schedule of future payments, slowly changing the date of disbursement, and indicating that a check would not be mailed in the month of July, 1993. No statement of "notice of appeal rights" was included in the letter. Further, the January 1993 check was mailed in December, 1992, and the February, 1993 check was mailed in January, 1993. No check was issued in February, 1993. Therefore, no checks were issued in February or July, even though, February's check was issued in January and January's in December. This means that the beneficiaries received only 10 checks in the calendar year 1993. Further, and most importantly, the beneficiaries received only 11 checks for the entire year's payments. (No checks were issued for the month of July, 1993.) The State Industrial Insurance System kept this money which rightfully belonged to the beneficiaries.

SIIS has never made up the payment which it took from the pensioner beneficiaries. This action was essentially a smoke and mirrors tactic of keeping this one payment from all the beneficiary pensioners, disguised by the course of changing the disbursement

dates. The result was that the SIIS, which was "in the red" financially before this act, was able to keep approximately $2,500,000.00 (2.5 million dollars) of the pensioners' monies.

On or about July 8, 1993, a lawyer representing HARRISON at the time, sent a letter to SIIS giving notice of objection and requesting appropriate notice in order to pursue any and all remedies available.

On or about August 5, 1993, SIIS sent a letter to Mr. Harrison with an apology for any hardship that the change caused him. The letter also stated that a newly enacted statute required this change.

Mr. Harrison later received a letter, dated September 30, 1993, from Mr. Ralph S. Gilbert, Investigator with the Attorney General's Office, Worker's Compensation Fraud Unit. The letter stated that the change in time on benefit payments was a SIIS management decision, and that the "policy change was required by the new State law governing SIIS."

Neither of these statements was true. No state law allowed SIIS to keep $2.5 million of the beneficiary pensioners' monies without any due process. Without receiving a "Notice of Appeal" form, Harrison appealed. On October 22, 1993, Hearing Officer Crown affirmed, *inter alia*, "The insurer did not abuse

its discretion in the payment plan, but utilized SB 316, Section 210(1)."

Mr. Harrison filed a complaint on March 1, 1995. The Complaint was timely and properly served and SIIS filed its answer on July 14, 1995. On October 18, 1995, the pensioners filed a Motion to Certify Case as a Class Action. On November 22, 1995, the SIIS filed a Motion to Dismiss Complaint and an Opposition to Motion to Certify Case as a Class Action. The petitioners filed a separate Opposition to each the Motion to Dismiss and the Motion to Certify Case as Class Action on or about December 20, 1995. The SIIS filed Reply Points & Authorities on February 28, 1996.

On February 28, 1996, the District Court entered its Order declining to certify the class prior to determining whether the complaint alleged a claim upon which relief could be granted. The District Court also ordered additional briefing on the legal issue of whether the change in timing of the payments was prohibited by law. The pensioners filed a supplemental brief on April 30, 1996, and the SIIS filed a supplemental brief on May 16, 1996.

The District Court treated the Motion to Dismiss as a Motion for Summary Judgment. The District Court granted the Motion on July 26, 1996. Pensioners filed a

Notice of Appeal to the Nevada Supreme Court on August 20, 1996. The Nevada Supreme Court granted pensioners an extension of time, and their Opening Brief was timely filed on February 9, 1997. The SIIS filed its Answering Brief on or about March 12, 1997. The pensioners filed their Reply Brief on or about April 8, 1997.

The Nevada Supreme Court dismissed the appeal by Order of September 24, 1998. The Nevada Supreme Court erroneously determined that the change in timing of payments was not error, because pensioners received 13 payments in 1992. The Nevada Supreme Court erroneously determined that 11 payments were made in 1993. Actually only 10 payments were made in 1993. The record is clear on this point. Moreover, a clear accounting of 1994 may be required. This Petition for Writ of Certiorari follows.

REASONS FOR GRANTING THE WRIT

This Writ comes before this honorable Court because a Summary Judgment Motion was granted and affirmed which essentially denied that this class of permanent total pensioners and death beneficiaries be certified. Further, this class of pensioners were erroneously denied one months payment of benefits during the year of 1993.

The focus of the District Court and the Nevada Supreme Court upon whether the change in the timing of payments was prohibited by law was erroneous. Further, the decision of the Nevada Supreme Court that 13 payments were issued in 1992 and 11 were issued in 1993 was erroneous and is not supported by the record.

The issue was whether one or more violations occurred under the Fifth and Fourteenth Amendments because the SIIS deprived pensioners of one month of beneficiary payments, to the outrageous benefit of SIIS and the egregious detriment of pensioners.

The SIIS has committed an egregious and premeditated theft from those citizens of its State who are the most vulnerable: the permanently disabled and the widowed because of employment related injuries and deaths. The SIIS performed this premeditated theft surreptitiously and without proper notice to its pensioners. This Most Honorable of Courts cannot allow this action to go unresolved and unpunished.

ARGUMENT

I.
THIS HONORABLE COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI TO DETERMINE THAT THE SIIS ILLEGALLY TOOK ONE MONTH'S BENEFIT PAYMENTS FROM PENSIONERS.

Although this Court does not often determine factual questions, the error of the Nevada Supreme Court in this case is so harmful that to not review the entire record, *de novo*, would be to allow one or more fundamental constitutional violations to occur.

The record shows that the SIIS only paid ten payments during the calendar year of 1993. This alone is a violation of State statutes. NRS 616.580(1) entitles permanently disable pensioners to benefits "per month."

Webster's New International Dictionary, 2d Edition, defines month and monthly as follows:

> "Month.....In popular use, a period of four weeks or of 30 days is often called a month."

Webster's at page 1589.

> "Calendar month is (1) Any of the months as adjusted in the calendar, now Gregorian."

Webster's, at 1589.

> "Monthly, adv. 1. Once a month; every month."

Webster's, at 1590.

A change in the timing of payments -- or more importantly, the distribution of payment more than 30 or 31 days apart — is outside the discretion of SIIS's authority. *Please see* Northern Nevada Association for Injured Workers v. SIIS, 107 Nev. 108, 807 P.2d 728 (1991), which set forth the discretionary verses the operational obligations of SIIS.

According to the Nevada Supreme Court, discretionary acts were limited to:

> 1. The right to determine whether a worker is covered under Nevada's worker's compensation statutes as an injured employee;
>
> 2. The right to determine if an

> accident was in the course and scope of employment;
>
> 3. The right to determine the nature and severity of a claimant's disability.

However, the duty to pay the benefits every month falls within the mandatory obligations for which SIIS has no discretion. Northern Nevada Association for Injured Workers v. SIIS, 107 Nev. at 114.

The record reflects that only ten payments were paid in 1993. Although the SIIS can account for one of those payments, because it paid one payment in December 1992 for January 1993, it cannot account for the other payment missing in July of 1993. Therefore, the Nevada Supreme Court erred when it dismissed the appeal by determining that only eleven payments were paid in 1993, but 13 were paid in 1992. The SIIS cannot account for one of the payments which was due pensioners in 1993. This Honorable Court must grant a Writ of Certiorari in order to determine that pensioners were actually deprived of one payment in 1993.

II.

THIS HONORABLE COURT SHOULD GRANT A WRIT OF CERTIORARI TO DETERMINE THAT THE SIIS'S DEPRIVATION OF ONE MONTH'S PAYMENTS FROM PENSIONERS RESULTED IN AN ILLEGAL TAKING OF PROPERTY IN VIOLATION OF THE FIFTH AMENDMENT, THE FOURTEENTH AMENDMENT, THE DUE PROCESS CLAUSE, AND THE EQUAL PROTECTION CLAUSE.

The Fifth Amendment to our United States Constitution provides in pertinent part: "[N]or shall private property be taken for public use, without just compensation."

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part: "[N]or shall any State deprives any person of life, liberty, or property, without due process of law; nor deny to any person within it jurisdiction the equal protection of the laws."

Title 42, United States Code, Sec. 1983,

provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State..subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The Fifth Amendment prohibits the governmental taking of private property "for public use without just compensation." The prohibition is applicable to the states through the Fourteenth Amendment. Chicago Burlington & Quincy Railroad v. Chicago, 166 U.S. 226 (1987).

Under the Fifth and Fourteenth Amendments, fair process is required for intentional acts of the government or its employees. Daniels v. Williams, 474 U.S. 327 (1986).

Under the Fourteenth and Fifteenth Amendments, grossly unreasonable discrimination by the government violates the Equal Protection clause.

The United States has recognized that an individual may acquire a statutorily-created property interest in the continued receipt of disability benefits protected by the due process clause of the Fourteenth Amendment. Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18. The continued receipt of *monthly* benefit payments for these pensioners is a statutorily-created property interest which is created by NRS 616.580 and protected by the due process clause of the Fourteenth Amendment.

Three factors are relevant in determining what process is constitutionally due: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest. Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18.

(1) The private interest affected is the statutorily-created legitimate property interest of all the permanently disabled pensioners and the death benefit pensioners in continued monthly payments which they depend upon to survive. The amount taken from these pensioners was approximately $2.5 million dollars.

(2) The risk of an erroneous

deprivation of this interest through the procedures used is approximately 100%. All pensioners were affected and SIIS never informed any pensioners of their appeal rights, nor did SIIS truly inform pensioners that they would not only be changing the distribution dates, but taking a payment from them at the same time; the SIIS offered absolutely no additional or substitute procedural safeguards.

(3) The government's interest was in no way legitimate. The SIIS claimed in its briefing to the Nevada Supreme Court that it had an interest in managing the pension payment system according to standard business practice. It is hereby asserted that "standard business practice" should not include stealing money from the permanently disabled and widowed in the interest of managing the government's financial ledgers.

Pensioners received no pre- or post-deprivation hearing. Nor were they ever truly informed that the SIIS had completely deprived them of one month's check.

By failing to notice pensioners of what was actually transpiring, or to inform pensioners of their right to an appeal, through administrative channels or otherwise, the SIIS deprived pensioners of their property interests in violation of the Fifth and Fourteenth Amendments, the Due Process Clause and the Equal Protection Clause.

This Honorable Court has held that "[D]ue process is flexible and calls for such procedural protections as the particular situation demands' "). Mathews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976).

CONCLUSION

Mr. Ronald Harrison and all those similarly situated, either the permanently disabled pensioners or the death beneficiaries, have been deprived of a legitimate, statutorily-created property interest, without due process of law. The violation lies either in a Fifth Amendment Takings Violation, a Fourteenth Amendment Due Process violation, a 42 U.S.C. §1983 violation, or an Equal Protection violation, or any combination or all of these.

The Nevada Supreme Court erroneously perceived that the issue was merely one of the timing of the benefit payments. Timing is simply the tool the SIIS used to deprive its pensioners of the one month of benefit payments.

The instant case presents a matter of fundamental constitutional error of the worst magnitude and demands this Honorable Court's attention.

Petitioners respectfully request that this petition for writ of certiorari be granted.

DATED: March 24, 1999.

Respectfully Submitted,

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APPENDIX

APPENDIX A— DECISION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEVADA FILED SEPTEMBER 24, 1998

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 29263

RONALD HARRISON, INDIVIDUALLY, AND RONALD HARRISON, AS REPRESENTATIVE OF THE ESTATE OF ROBERT BALL, AND RENO DEVENCENZI, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Appellants,

v.

STATE INDUSTRIAL INSURANCE SYSTEM,

Respondent.

ORDER DISMISSING APPEAL

This is an appeal from the district court's grant of summary judgment in a common law action against the State Industrial Insurance System.

On February 12, 1993, the State Industrial Insurance System ("SIIS") changed the timing schedule of payments to recipients of Permanent Total Disability ("PTD")

benefits from the beginning to the end of each month. On March 1, 1995, appellants Ronald Harrison, et al. ("Harrison") filed a complaint against the SIIS, alleging bad faith claims practices, negligence claims, and seeking a declaratory judgment to the effect that SIIS's change in the payment schedule was improper. Harrison also sought general damages. On October 18, 1995, Harrison petitioned the district court to certify the case as a class action, pursuant to NRCP 23. SIIS moved to dismiss. On February 27, 1996, the district court considered the pending motions and (1) denied Harrison's motion to certify and (2) ordered further briefing on the legal issue so as to rule on the merits of the claims.

Thereafter, the district court held another hearing during which it granted judgment in favor of SIIS.

Harrison appeals, arguing that the district court erred in concluding that (1) SIIS's decision to change the benefits was not illegal, and (2) Harrison was not entitled to recover any allegedly lost benefits. Instead, Harrison maintains on appeal that SIIS did not have the authority to make such timing changes; NRS 616.580(1) mandates payments to be made on the first of every month, and SIIS deprived him of one month's benefit payment.

Having considered the briefs and the record, we conclude that reversal is not warranted, and we dismiss Harrison's appeal

.

1. Without reference to authority, Harrison argues that (1) the change in timing of benefit payments from the beginning to the end of the month was prohibited

by law; and (2) the change in timing payments is outside the discretionary authority of SIIS. Although this court need not consider conclusory arguments lacking substantive citation to relevant authority, see SIIS v. Buckley, 100 Nev. 376, 682 P.2d 1387, 1390 (1984), we conclude, based on a review de novo, that the change in timing of PTD payments was within the discretionary authority of the SIIS. See NRS 41.032 (SIIS is entitled to immunity in regard to discretionary acts). Thus, the agency and district court did not err in their determinations on this issue. See Collect Electric v. Dubovik, 112 Nev. 193, 196, 911 P,2d 1192, (1996) (reversal only when decision was clearly erroneous or payment for that month was made. Although there were eleven checks issued in 1993, Harrison did receive an extra check issued at the end of 1992. Thus, no monthly payment obligation went unpaid.

We conclude that SIIS was entitled to judgment as a matter of law and that the district court did not err in granting summary judgment.

Accordingly, for the reasons stated, we hereby ORDER this appeal dismissed.

s/ Springer
HON. CHARLES E. SPRINGER
Chief Justice Judge

s/ Shearing
HON. MIRIAM SHEARING
Justice Judge

s/ Rose
HON. ROBERT E. ROSE
Justice Judge

s/ Young
HON. CLIFF YOUNG
Justice Judge

s/ Maupin
HON. WILLIAM A. MAUPIN
Justice Judge

cc: Hon. Michael E. Fondi, District Judge
George F. McNally
Mary Lynn Newman
Alan Glover, Clerk

APPENDIX B— DECISION AND ORDER OF THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR CARSON CITY FILED JULY 26, 1996

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR CARSON CITY

Case No. 95- 00364A

RONALD HARRISON, ROBERT BALL, RENO DEVENCENZI, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

STATE INDUSTRIAL INSURANCE SYSTEM, a Nevada Public Agency, and DOES 1 through 25, inclusive,

Defendants.

ORDER

THIS MATTER comes before the Court upon the Motion to Certify Case as Class Action filed by Plaintiffs on October 18 1995 and upon the Motion to Dismiss Complaint filed by defendant STATE INDUSTRIAL INSURANCE SYSTEM ("SIIS") on November 22, 1995. On February 27, 1996, the Court ordered the parties to

submit supplemental briefs on a question of law. Plaintiffs filed their supplemental brief on April 30, 1996; Defendant filed its supplemental brief on May 16, 1996. This order is based on a review of the motions, the responsive pleadings, and the supplemental briefs filed with the Court to date.

The facts in this case are not in dispute. On February 12, 1993, SIIS sent a letter to recipients of Permanent Total Disability ("PTD") benefits informing them that payment would henceforth be paid at the end, rather than the beginning, of the month in which they come due. The letter provided a schedule indicating that the payments would gradually move later in the month beginning in March 1993. As of July 1993, a given month's benefits were payable at the end of that month. One result of this changed practice was that PTD recipients received only eleven checks during the calender year of 1993.

SIIS's Motion asks the Court to dismiss this case because Plaintiffs have no legal right to receive benefit payments at the beginning of a month in which they become due. In assessing a motion to dismiss under NRCP12(b)(5), the Court must look to see if the complaint itself alleges a claim upon which relief may be granted, and in so doing, the Court must construe the complaint liberally and draw every fair intendment in favor of the Plaintiff. Capital Mortgage Holding v. Hahn, 101 Nev. 314 (1985). When the Court also considers matters outside the pleadings, the motion is

law. Wiley v. Redd, 110 Nev. 1310 (1994). SIIS attaches several exhibits to its Motion, and, in its reply, concedes that summary judgment may be the more appropriate tool in this case.

The Complaint alleges three causes of action: 1) Bad Faith, 2) negligence, and 3) declaratory judgment. All causes of action stem from the underlying act of SIIS moving PTD payment from the beginning to the end of the month. As the Court stated in its earlier order, no material question of fact exists with regard to the changing of the time PTD payments are made. Therefore, because the Court finds that judgment in favor SIIS is warranted as a matter of law, summary judgment is granted to Defendant.

The statute in question here is the version of NRS 616. 580(1) in effect prior to the 1983 legislative changes which reads, "In cases of total disability adjudged to be permanent, compensation per month of 66 2/3 percent of the average monthly wage." Plaintiffs contend that "per month" means that they are entitled to receive benefits twelve times a year. Thus, Plaintiffs argue that the change in timing of PTD benefits, which resulted in eleven checks being received during the calender year of 1993, violates this statute. The Court is not persuaded. The reality of this case is that, prior to the change in timing, PTD beneficiaries were receiving payment at the beginning of the month, before benefits had accrued for that month. Plaintiffs were, in fact, receiving an extra benefit not required by NRS 616.580(1); that is, they were paid before their monthly payments had come due.

Plaintiffs cannot cite authority indicating that they

have acquired a right to receive payment of benefits prior to earning them. Plaintiffs also do not cite examples of other persons similarly situated who receive state payments before those payments have been earned or accrued. The reason Plaintiffs cannot cite similar examples is because it is customary for persons to be paid after the have earned a right to payment. People, be they employees or insurance beneficiaries, are traditionally paid after they have earned a right to such payment. While it is certainly unfortunate that Plaintiffs had to adjust to a new schedule for receipt of SIIS benefits, it is also reasonable for SIIS to make payments to Plaintiffs after benefits have accrued for that month rather than before. The Court finds that on the legal issue of whether PTD payments can be made subsequent to the accrual of benefits, SIIS is entitled to summary judgment in its favor. Further, because this issue is entitled to summary judgment as to all causes of action claimed in this matter.

In light of the above ruling, Plaintiffs' Motion to Certify Case as a Class Action is moot.

NOW, THEREFORE, IT IS HEREBY ORDERED that summary judgment in the above-entitled matter is granted in favor of Defendant.

DATED this 26th day of July, 1996.

s/ Michael E. Fondi
HON. MICHAEL E. FONDI
District Judge

cc: George F. McNally, Esq.
D. Michael Clasen, Esq.

APPENDIX C-
HARRISON PENSION BENEFIT PAYMENT SCHEDULE 1993

CALENDAR MONTH AND YEAR	DATE OF SIIS DEPOSIT	BENEFIT MONTH	DAYS BETWEEN PAYMENTS
December 1992	12/02/92 12/22/92	December, 1998 January, 1993	N/A 20 days
January, 1993	**none**	**January, 1993**	**no payments**
February, 1993	02/01/93	February	40 days
March, 1993	03/12/93	March, 1993	40 days
April, 1993	04/19/93	April, 1993	37 days
May, 1993	05/24/93	May, 1993	35 days
June, 1993	06/30/93	June, 1993	37 days
July, 1993	**none**	**July, 1993**	**no payments**
August, 1993	08/04/93	July, 1993	35 days
September, 1993	09/03/93	August, 1993	30 days
October, 1993	10/04/93	September, 1993	31 days
November, 1993	11/04/93	October, 1993	30 days
December, 1993	12/03/93	November, 1993	30 days

HARRISON PENSION BENEFIT PAYMENT SCHEDULE 1993

CALENDAR MONTH AND YEAR	DATE OF SIIS DEPOSIT	BENEFIT MONTH	DAYS BETWEEN PAYMENTS
January, 1994	01/04/94	December, 1993	31 days
February, 1994	02/ /94	January, 1994	recds missing
March, 1994	03/ /94	February, 1994	recds missing
April, 1994	04/ /94	March, 1994	recds missing
May, 1994	05/02/94	April, 1994	unknown
June, 1994	06/03/94	May, 1994	32 days
July, 1994	07/05/94	June, 1994	32 days
August, 1994	08/01/94	July, 1994	27 days
September, 1994	09/02/94	August, 1994	32 days
October, 1994	10/05/94	September, 1994	33 days
November, 1994	11/01/94	October, 1994	27 days
December, 1994	12/02/94	November, 1994	31 days

****In 25 months, only 24 deposits were made to Plaintiffs Account.**